

SEP 04 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LIBERADO VARGAS-
CASTANEDA,

Defendant - Appellant.

No. 07-50421

D.C. No. CR-06-01842-DMS

MEMORANDUM *

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted August 26, 2008 **

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Jose Liberado Vargas-Castaneda appeals from the district court's denial of his motion to dismiss the indictment charging him with being a deported alien

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

found in the United States, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Vargas-Castaneda's motion to file his untimely reply brief is granted. The Clerk shall file the reply brief received on April 9, 2008.

Vargas-Castaneda contends that his underlying deportation proceeding was invalid because the immigration judge failed to advise him that he was eligible to apply for waiver of deportation, pursuant to 8 U.S.C. § 1182(h). We conclude that Vargas-Castaneda was not prejudiced by any defect in his deportation proceeding. Vargas-Castaneda has not shown a plausible ground for relief from deportation because the evidence of extreme hardship to his United States citizen children is insufficient. *See United States v. Muro-Inclan*, 249 F.3d 1180, 1185-86 (9th Cir. 2001).

We remand to the district court with instructions to correct the reference in the judgment to "8 U.S.C. § 1326(a) and (b)." *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct judgment.